

# EXHIBIT 5

VEN-A-CARE OF THE FLORIDA )  
KEYS, INC., )  
 )  
Plaintiff, )  
 ) No. 07 CV 11618  
vs ) PBS  
 )  
ABBOTT LABORATORIES, INC. )  
 )  
Defendant. )

LA. REPORTING, INC. (312) 419-9292

<p style="text-align: right;">Page 14</p> <p>1 Foundation.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I've never been on a sales call so</p> <p>4 my extent is I know they have a sales force and</p> <p>5 they call on physicians, but I've never</p> <p>6 participated in a sales call.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Okay. Do you have a general</p> <p>9 understanding of how the sales force calls on</p> <p>10 physicians?</p> <p>11 A. Generally.</p> <p>12 Q. Okay. And is it -- tell me what</p> <p>13 that understanding is.</p> <p>14 A. The sales people learn about the</p> <p>15 products, what it's approved for and talks to the</p> <p>16 physician about its product attributes.</p> <p>17 Q. Is it your understanding that the</p> <p>18 sales force that calls on physicians discusses</p> <p>19 clinical attributes?</p> <p>20 A. That's my understanding.</p> <p>21 Q. Do they discuss pricing to your</p> <p>22 understanding?</p> <p>23 A. Not to my understanding, but I have</p> <p>24 never been on sales call so I can't speak</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. BERLIN: Objection. Form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. What type of pricing do you mean?</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Well, let's take the pricing offered</p> <p>6 to customers first.</p> <p>7 A. Okay.</p> <p>8 Q. I'll rephrase it given your request</p> <p>9 for clarification. How does the presence of</p> <p>10 multisource generic competition impact, if at all,</p> <p>11 PPD's pricing of its drugs to customers?</p> <p>12 A. In that environment, it's more</p> <p>13 competitive. Typically, Abbott can't match the</p> <p>14 contract price of a generic. So it is a</p> <p>15 consideration, but typically we can't match their</p> <p>16 price so we look at options that are on the table</p> <p>17 where we think we can compete on price, but if we</p> <p>18 don't think we can compete, then in general, we</p> <p>19 would leave the contract price where it is or</p> <p>20 remove any contract, voluntary contract pricing</p> <p>21 that we have.</p> <p>22 Q. Are you familiar with prescriptions</p> <p>23 that some doctors write that are mechanisms that</p> <p>24 require the filling of a brand such as when the</p>
<p style="text-align: right;">Page 15</p> <p>1 intelligently about that.</p> <p>2 Q. Have you been involved in pricing</p> <p>3 matters with respect to the marketed brand drugs?</p> <p>4 A. Yes. I was in the pricing</p> <p>5 department. So, yes.</p> <p>6 Q. Okay. Now, we'll come back to that.</p> <p>7 On the multisource products, can you describe</p> <p>8 generally what your understanding is of the PPD's</p> <p>9 view of the multisource products?</p> <p>10 MR. BERLIN: Objection. Form.</p> <p>11 BY THE WITNESS:</p> <p>12 A. Do you mean -- sorry. Can you</p> <p>13 clarify?</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q. Yeah. I'll rephrase it. What drugs</p> <p>16 did PPD view as multisource products?</p> <p>17 A. Products that faced generic</p> <p>18 competition. Some examples I can think of is</p> <p>19 Gengraf. Now, Mavik and Tarka are included in</p> <p>20 multisource. Erythromycin, Biaxin and Omnicef are</p> <p>21 included in those as well.</p> <p>22 Q. How does the presence of multisource</p> <p>23 generic competition impact PPD's treatment of the</p> <p>24 pricing of the drugs?</p>	<p style="text-align: right;">Page 17</p> <p>1 physician may write brand necessary or dispensed</p> <p>2 as written?</p> <p>3 A. Yes. I've heard of that.</p> <p>4 Q. And are you aware that even in cases</p> <p>5 where a generic substitute for a given brand drug</p> <p>6 may be available, a physician may have the ability</p> <p>7 to write dispensed as written --</p> <p>8 A. Yes.</p> <p>9 Q. -- and then require, in turn, that</p> <p>10 the brand actually be the drug that's dispensed?</p> <p>11 A. Yes. I'm aware that that exists.</p> <p>12 Q. And when -- for some of its brand</p> <p>13 drugs when Abbott faces generic competition, does</p> <p>14 Abbott decide not to compete with the generics</p> <p>15 regarding substitution, but instead simply try to</p> <p>16 garner that part of the business that's dispensed</p> <p>17 as written?</p> <p>18 MR. BERLIN: Objection. Form.</p> <p>19 Foundation.</p> <p>20 BY THE WITNESS:</p> <p>21 A. We -- in certain circumstances when</p> <p>22 a product goes generic, we look and see if what we</p> <p>23 call a DAW campaign, dispensed as written</p> <p>24 campaign, would be effective or not.</p>

5 (Pages 14 to 17)

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1 at that. At that point, there was a contract  
2 change that I was involved in and I can remember a  
3 couple cases where actually we had to increase the  
4 WAC price because the contract price would have  
5 been above the WAC price if we didn't increase the  
6 WAC price.

7 BY MR. ANDERSON:

8 Q. I'm familiar with what you're  
9 referring to and I've got some documents on that.  
10 Maybe we should back up just a step --

11 A. Okay.

12 Q. -- and get some understanding of  
13 these terms. You've mentioned WAC a couple of  
14 times and I've included it in my questions, what  
15 is your understanding of the meaning of the term  
16 WAC?

17 A. WAC is a publicly available price  
18 that Abbott sets for its products. Not just  
19 Abbott, but the pharmaceutical industry and it's  
20 the price that's available to customers who buy in  
21 case size or larger, a case of product.

22 Q. Is it available to any customers or  
23 only certain types of customers such as  
24 wholesalers?

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1 A. I believe as long as people buy in a  
2 case size and they're an approved Abbott customer,  
3 then those customers could buy WAC.

4 Q. To your knowledge, is WAC known also  
5 as a wholesale invoice price?

6 MR. BERLIN: Objection. Form.

7 BY THE WITNESS:

8 A. Not to my knowledge. We typically  
9 would use WAC.

10 BY MR. ANDERSON:

11 Q. Are you aware of any industry  
12 standard definition of WAC?

13 A. I believe it's the same for the  
14 industry as for Abbott.

15 Q. And that is a price for a case size  
16 to any customer regardless of whether they're a  
17 wholesaler or not?

18 A. I believe so.

19 Q. What do you base that on?

20 A. I've never worked at another company  
21 besides Abbott. We do provide -- the pricing  
22 department specifically does provide WAC prices or  
23 at least in the past when I was in the pricing  
24 department provided WAC prices to a company like

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1 First Data Bank and in there they use the term WAC  
2 and it included other products as well, not just  
3 Abbott products.

4 Q. Did you have any understanding that  
5 other drug companies defined WAC the same way that  
6 Abbott did?

7 A. I assumed it would be the same just  
8 because if it was included in the same column, I  
9 made the assumption that it was defined the same  
10 from an outside source.

11 Q. Were you aware of any definitions by  
12 First Data Bank of WAC?

13 A. I assumed it was the same as we  
14 defined it.

15 Q. Why did you make that assumption?

16 A. Because it was the same term.

17 Q. You knew of Abbott's definition of  
18 WAC and when you saw that term used in First Data  
19 Bank's database you just assumed they were the  
20 same?

21 A. Yes.

22 MR. BERLIN: Objection. Form.

23 BY MR. ANDERSON:

24 Q. Okay.

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1 MR. BERLIN: I'm sorry. You just  
2 need to give me a little room to object if  
3 necessary.

4 BY MR. ANDERSON:

5 Q. Do you have any knowledge that other  
6 drug companies -- other than this assumption  
7 you've described, do you have any knowledge that  
8 other drug companies defined WAC the same as  
9 Abbott?

10 A. No. I don't have any other  
11 knowledge.

12 Q. Did you ever communicate with any  
13 other drug companies at all about WAC or the  
14 meaning of WAC?

15 A. No.

16 Q. Did you ever communicate with any  
17 customers of Abbott's about WAC or the meaning of  
18 WAC? I'll rephrase to be more specific. Did you  
19 ever discuss with any customers of Abbott's the  
20 meaning of the term WAC?

21 A. I can't remember any specific  
22 circumstances where I did.

23 Q. Is it your understanding that WAC  
24 prices are part of the charge back process?

10 (Pages 34 to 37)

<p style="text-align: right;">Page 114</p> <p>1 wouldn't.</p> <p>2 Q. Did any understanding of AWP come up</p> <p>3 in the context of contract renewals?</p> <p>4 A. No.</p> <p>5 Q. Looking back at what's been marked</p> <p>6 as Exhibit 4. The second page of Exhibit 4 in the</p> <p>7 lower left-hand corner, there's a -- well, on the</p> <p>8 lower right-hand corner, too, frankly. Do you see</p> <p>9 the lower right-hand corner that reads</p> <p>10 "pharmaceutical pricing example"?</p> <p>11 A. Yes.</p> <p>12 Q. And there's a formula set forth for</p> <p>13 pharmaceutical reimbursement, do you agree?</p> <p>14 A. It doesn't say that it's for</p> <p>15 reimbursement. There's a couple different lines</p> <p>16 on here.</p> <p>17 Q. Yeah. There's a formula set forth</p> <p>18 that reads "AWP minus 15 percent with \$3</p> <p>19 dispensing fee," correct?</p> <p>20 A. Yes.</p> <p>21 Q. And do you think that's</p> <p>22 representation of a typical pharmaceutical</p> <p>23 reimbursement formula?</p> <p>24 A. I haven't looked at any</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yeah. I mean the AWP I think was</p> <p>2 part of it that I understood and, generally,</p> <p>3 dispensing fee. So there was, I think, two</p> <p>4 components to it, but what the exact calculations</p> <p>5 were state by state, I don't know.</p> <p>6 Q. You didn't know the precise discount</p> <p>7 off of AWP, but you knew generally states were</p> <p>8 discounting off of AWP?</p> <p>9 A. Yes.</p> <p>10 Q. And did you believe those discounts</p> <p>11 were somewhere around 15 percent?</p> <p>12 A. I didn't know that I spent much time</p> <p>13 thinking about it. There wasn't a need to know.</p> <p>14 Q. Did you consider the discounts off</p> <p>15 of AWP that medicaid reimbursed in your</p> <p>16 calculations of medicaid rebates at all?</p> <p>17 A. AWP didn't -- wasn't a part of</p> <p>18 medicaid rebates, except for like we discussed the</p> <p>19 supplemental rebates.</p> <p>20 Q. I know. For purposes of these</p> <p>21 questions, I'm focusing on OBRA'90 medicaid</p> <p>22 rebates.</p> <p>23 A. Okay.</p> <p>24 Q. Is it true that AWP was not a part</p>
<p style="text-align: right;">Page 115</p> <p>1 reimbursement formulas lately. I mean it's a</p> <p>2 dispensing fee. Sounds like it would be something</p> <p>3 that would be paid to pharmacies.</p> <p>4 Q. And then the slide to the left reads</p> <p>5 "sample managed care pharmacy reimbursement rate,"</p> <p>6 and the formula of AWP minus 15 percent plus</p> <p>7 dispensing fee is set forth again, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Did you and others at Abbott pricing</p> <p>10 and PPD understand that that was one of the</p> <p>11 formulas for reimbursement?</p> <p>12 A. I wasn't in this specific training.</p> <p>13 We did understand that AWP was used in</p> <p>14 reimbursement and this is a managed care slide and</p> <p>15 I never worked in the managed care area. So this</p> <p>16 may have been -- I don't know. My focus was on</p> <p>17 the medicaid government and institutional</p> <p>18 contracting.</p> <p>19 Q. Did you have an understanding of</p> <p>20 what reimbursement formulas were for medicaid?</p> <p>21 A. I think generally that they used</p> <p>22 AWP.</p> <p>23 Q. Along the lines of the formula set</p> <p>24 forth here in these slides?</p>	<p style="text-align: right;">Page 117</p> <p>1 your calculations of those rebates?</p> <p>2 A. Yes, that's true.</p> <p>3 Q. What prices were part of those</p> <p>4 calculations?</p> <p>5 A. For the medicaid rebate</p> <p>6 calculations, we calculated AMP, the average</p> <p>7 manufacturer price and, BP, the best price. And</p> <p>8 that was submitted to the federal government.</p> <p>9 Q. Did you transmit any AMP prices or</p> <p>10 best prices, BP's, to any state medicaid programs?</p> <p>11 A. I don't remember any specific</p> <p>12 examples. I think when I was in the department</p> <p>13 there was -- different states requested different</p> <p>14 metrics, especially relating to some of their new</p> <p>15 state programs or supplemental programs. So it's</p> <p>16 possible we did. I just can't think of a specific</p> <p>17 example.</p> <p>18 Q. I'll tighten up my question and make</p> <p>19 it more specific to address that.</p> <p>20 A. Okay.</p> <p>21 Q. Other than communications with</p> <p>22 states about supplemental rebates on brand drugs,</p> <p>23 did you communicate any AMP's or BP's for Abbott</p> <p>24 or Erythromycin products to any state medicaid</p>

30 (Pages 114 to 117)

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1 product was taken into account, that it was still  
2 a positive situation. It would add dollars to the  
3 bottom line.

4 Q. Did Abbott conduct that type of  
5 return of investment on its drugs from time to  
6 time?

7 A. When we did contracting scenarios  
8 where we're evaluating whether or not we wanted to  
9 contract, yes.

10 Q. On the multisource drugs such as the  
11 Erythromycin, did Abbott conduct ROI analysis?

12 A. I conducted an ROI analysis on Ery  
13 for my job in 2003.

14 Q. Ery was a line of products that were  
15 discounted to customers, correct?

16 A. We -- it was discounted to the  
17 contract customers, yes.

18 Q. Were there certain minimum  
19 thresholds of sales that needed to be achieved so  
20 there were sufficient volumes?

21 MR. BERLIN: Objection. Form.  
22 BY THE WITNESS:

23 A. I don't recall the specifics of the  
24 agreement at this point. I know we offered

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1 discounts and discounts were typically something  
2 you could buy at the discounted price. Rebates  
3 are something that are generally paid after the  
4 fact and so the contracts had a combination of  
5 those two, but I don't remember exactly what the  
6 terms said in terms of volume, purchase  
7 requirements.

8 BY MR. ANDERSON:

9 Q. I understand. I was asking actually  
10 a different question.

11 A. Okay.

12 Q. I was asking about any analysis  
13 Abbott did, maybe as a part of an ROI analysis for  
14 instance, about the sales volumes that were  
15 necessary in order to successively and profitably  
16 manufacture Erythromycin from Abbott's  
17 perspective?

18 A. What I remember about the  
19 Erythromycin agreements was actually maybe not a  
20 true ROI calculation, it was more looking at  
21 the -- what the contract price was versus the cost  
22 to manufacture to make sure that what we were  
23 charging the customers was more than what it cost  
24 us to produce it. In some cases, essentially,

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1 since the Erythromycin volume was decreasing our  
2 cost of goods were increasing. So in those cases,  
3 we would need to increase the contract price. So  
4 I don't remember doing any specific calculations  
5 that if we increase the contract price by this or  
6 decrease the contract price by this, it would have  
7 this impact on volume. It was more of, are we  
8 actually making any money by selling this product.

9 Q. Okay. Let me back up and ask a  
10 different question that's a little bit bigger  
11 picture.

12 A. Okay.

13 Q. Did Abbott consider the possibility  
14 that by discounting Erythromycin and competing  
15 with other generics, it would sell more volumes of  
16 Erythromycin?

17 A. In the contract that I did, we  
18 actually increased the contract prices and in some  
19 cases larger than inflation. One of the  
20 considerations, I mean, definitely was the cost of  
21 goods sold. Are we making enough to cover our  
22 costs? Another thing was looking at how many  
23 competitors are actually competing in that price.  
24 If there's not a large number of competitors with

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1 Ery, then we would have more price flexibility  
2 because if a patient didn't want to pay the price,  
3 they don't have another Ery option to go, but they  
4 do have anti-effectives we could go to. So those  
5 were the two main considerations I remember about  
6 how we were thinking about increasing the contract  
7 price. I don't remember any discussions where we  
8 actually talked about discounting it or lowering  
9 the contract price.

10 Q. I understand your testimony about  
11 how if there's fewer generic competitors, prices  
12 may actually increase and conversely if there's  
13 more generic competitors, prices may decrease.

14 A. Right.

15 Q. I understand that. I'm actually  
16 asking about Abbott's analysis, if any, of sales  
17 volumes and that is what pricing needed to be in  
18 order to sell more units of Erythromycin?

19 A. I don't remember doing any analysis  
20 like that.

21 Q. Do you have any idea about the  
22 minimum thresholds of units that had to be  
23 manufactured in order to successively make  
24 Erythromycin at Abbott?

32 (Pages 122 to 125)



<p style="text-align: right;">Page 146</p> <p>1 prices?</p> <p>2 A. List prices are the public price</p> <p>3 that we'd offer to a customer coming to us that</p> <p>4 did not want to buy -- if they wanted to buy in</p> <p>5 less then a case size, less then a case quantity.</p> <p>6 Q. How many -- Strike that. Can you</p> <p>7 describe what you mean by case quantity?</p> <p>8 A. I think it varies by product so I</p> <p>9 don't think there's a standard one, but basically</p> <p>10 a shrink wrapped container of -- like bottles, for</p> <p>11 example. There would be a certain number of</p> <p>12 bottles in a case.</p> <p>13 Q. So if we're talking about Ery tabs,</p> <p>14 for instance, which are the tablets, and there's</p> <p>15 multiple bottles of the tablets, correct?</p> <p>16 A. Right.</p> <p>17 Q. Let's say we're talking about a</p> <p>18 hundred count. How many bottles containing one</p> <p>19 hundred tablets each of Erythromycin would make up</p> <p>20 a case?</p> <p>21 A. I'm not sure. There's a lot of</p> <p>22 products.</p> <p>23 Q. And the number that comprised a case</p> <p>24 varied from NDC to NDC?</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yes.</p> <p>2 Q. Are you familiar with that type of</p> <p>3 document at all?</p> <p>4 A. No.</p> <p>5 Q. Who within pricing and planning to</p> <p>6 your knowledge was involved in presenting Abbott</p> <p>7 terms and conditions?</p> <p>8 A. These types of terms and conditions</p> <p>9 I believe would generally be more in the bid</p> <p>10 process, which focused more on the hospital group</p> <p>11 purchasing organizations.</p> <p>12 Q. Okay. And who do you think was</p> <p>13 involved back in 2003 with that process?</p> <p>14 A. Donna Arnold and Sandy Siefken and</p> <p>15 Lynette Palbitska.</p> <p>16 Q. Thank you. I see Exhibit 7 is</p> <p>17 addressed to Debra DeYoung, do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you think from your experience</p> <p>20 Ms. DeYoung would, in turn, pass that information</p> <p>21 along to pricing personnel who would complete the</p> <p>22 bids such as Ms. Arnold or Ms. -- I'm drawing a</p> <p>23 blank -- Palbitska and who else?</p> <p>24 A. Siefken.</p>
<p style="text-align: right;">Page 147</p> <p>1 A. I believe so.</p> <p>2 Q. Generally, was it more than 20 that</p> <p>3 comprised a case or was there any rule of thumb,</p> <p>4 generally, about what volume of products were</p> <p>5 comprising a case when it came to the</p> <p>6 Erythromycins?</p> <p>7 A. I don't know. It's really more of a</p> <p>8 manufacturing and direct customer contact so I</p> <p>9 always dealt in bottles or individual tablet</p> <p>10 prices.</p> <p>11 Q. Okay. Now, back to the bid</p> <p>12 documentation. You see on Exhibit 8 there is some</p> <p>13 responses to -- Strike that. Some terms and</p> <p>14 conditions that Abbott apparently set forth --</p> <p>15 MR. BERLIN: Is that -- I'm sorry.</p> <p>16 I hate saying that, but is that a question?</p> <p>17 MR. ANDERSON: Yeah. I'll rephrase</p> <p>18 it.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q. Looking at Exhibit 8. Okay. Are</p> <p>21 you there?</p> <p>22 A. Yes, I am.</p> <p>23 Q. And you see it's titled Abbott terms</p> <p>24 and conditions addendum?</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Thank you.</p> <p>2 A. I believe they were the ones that</p> <p>3 did the filling out of the bid schedules and bid</p> <p>4 responses.</p> <p>5 Q. Okay. In looking at the Section 2J</p> <p>6 noted on the first page of Exhibit 8, that section</p> <p>7 is titled "medicaid approval". Did you have any</p> <p>8 understanding that retail buying groups or other</p> <p>9 customers of Abbott's were interested in knowing</p> <p>10 whether or not Abbott's products were eligible for</p> <p>11 medicaid reimbursement?</p> <p>12 A. No.</p> <p>13 Q. Do you have any understanding of why</p> <p>14 customers of Abbott's were -- may have been</p> <p>15 interested in whether the drugs were eligible for</p> <p>16 medicaid reimbursement?</p> <p>17 MR. BERLIN: Objection. Form.</p> <p>18 Foundation.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I mean for some of the chain</p> <p>21 warehouses or chains, they service medicaid</p> <p>22 patients. So I'm assuming they would want to know</p> <p>23 what happens when a medicaid patient comes in and</p> <p>24 how they're going to get paid for the drug that</p>

38 (Pages 146 to 149)

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1 worksheet?  
 2 A. I believe it was a screen in CARS  
 3 that allowed us to input the WAC prices. We  
 4 wanted the WAC prices in there to value the  
 5 medicaid sales at a WAC price so that we could  
 6 compare the medicaid sales to other areas of our  
 7 business.

8 Q. Why did you want to evaluate the  
 9 medicaid sales at WAC price?

10 A. The WAC price is the starting point  
 11 for all of our products. It's the publicly  
 12 available price and it's -- within Abbott, it's  
 13 the price that you start at when evaluating any  
 14 type of discount or price for the product.

15 Q. When you say at Abbott, you mean at  
 16 Abbott PPD?

17 A. Yes.

18 Q. Did you utilize WAC prices in that  
 19 context because you felt like they were a good  
 20 indicator of market prices?

21 MR. BERLIN: Objection. Form.  
 22 Asked and answered as well.

23 BY THE WITNESS:

24 A. It was -- WAC price is the publicly

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1 available price and any discount after that is  
 2 either mandated or voluntary so we want to start  
 3 at the beginning of pricing to really understand  
 4 what price are we offering to the market and how  
 5 is it discounted from there to put everything on  
 6 equal footing, all the products on an equal price  
 7 footing, starting point.

8 BY MR. ANDERSON:

9 Q. Did you find that evaluating the  
 10 published WAC prices enabled you to evaluate the  
 11 prices for the Ery's?

12 A. We used WAC for all of our products  
 13 in this context. Sorry. Can you state your  
 14 question again?

15 Q. Yeah. I'll restate it. Did you  
 16 find that evaluating the published WAC prices on  
 17 the Erythromycin products enabled you to evaluate  
 18 the amount of discounting or, as you say, the  
 19 starting point of the pricing for the Ery's?

20 MR. BERLIN: Objection. Form.

21 BY THE WITNESS:

22 A. In this context, what we were using  
 23 it for was to value our medicaid business and we  
 24 valued it at WAC.

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1 BY MR. ANDERSON:

2 Q. Why was Abbott trying to value the  
 3 medicaid business?

4 A. So we could understand how much of  
 5 our business went through that channel. We want  
 6 to understand as much as possible, especially for  
 7 the marketed products, where our business is going  
 8 and who our significant customers are.

9 Q. Specifically, with respect to the  
 10 Erythromycins, why did Abbott want to value the  
 11 amount of business that was being reimbursed by  
 12 medicaid?

13 A. This was something that we did for  
 14 all of our products. A lot more of our focus was  
 15 spent on marketing so this was -- Ery was just one  
 16 of the products and since we were doing this, we  
 17 did it for all of our products.

18 Q. Other than the fact that it was what  
 19 you did for the branded promoted products, was  
 20 there any other reason why you did it for Ery?

21 A. Not specifically for Ery. We did it  
 22 for all of our products and Ery was one of our  
 23 products.

24 Q. It was just kind of a PPD task that

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1 was done for all drugs and since the Ery's were  
 2 part of the PPD product line, they likewise were  
 3 analyzed?

4 A. Yes.

5 Q. Okay. So am I correct in assuming  
 6 that there are then reports that were created  
 7 analyzing the amount of business or sales of  
 8 Erythromycins that were ultimately reimbursed by  
 9 medicaid?

10 A. Yes, I think that information  
 11 exists, at least in the CARS system as something  
 12 you could query or I guess it would have been in  
 13 one of the I-many, the Cognos tool.

14 Q. In addition to the fact that the  
 15 information would exist in the system, you  
 16 actually created those reports, correct?

17 A. At this point, I believe it would  
 18 have been an option you could select within  
 19 Cognos. So if someone had a specific request, we  
 20 could query it. I don't recall a specific  
 21 instance of anyone asking specifically for Ery  
 22 medicaid sales at WAC.

23 Q. I understand you may not recall a  
 24 specific instance of it, but does the fact that

42 (Pages 162 to 165)



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1 Q. What makes the published WAC more  
2 meaningful, if at all, then the base deal WAC on a  
3 given Ery product at a given time back in 2002?

4 MR. BERLIN: Objection. Form.  
5 BY THE WITNESS:

6 A. In this case we wanted WAC to be  
7 consistent across all the products and we didn't  
8 want to include any contract prices and the base  
9 deal price was a contract price so we wanted the  
10 WAC for Ery.

11 BY MR. ANDERSON:

12 Q. Did you want the price that was  
13 being charged to wholesalers or did you want the  
14 published WAC price?

15 A. The published WAC price.

16 Q. How would the published WAC price to  
17 the extent it was different than the price charged  
18 the wholesalers assist you in evaluating medicaid  
19 sales?

20 MR. BERLIN: Objection. Form.

21 BY THE WITNESS:

22 A. We wanted all the products to be on  
23 equal footing and know what the starting WAC gross  
24 sales were. We didn't want to involve any type of

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1 pricing discounts, rebates discounts in this  
2 analysis. We wanted to evaluate it as a starting  
3 gross point.

4 BY MR. ANDERSON:

5 Q. Okay. So if I'm hearing you  
6 correctly, you're saying you viewed WAC as the  
7 starting sales price, correct?

8 A. Yes.

9 Q. Okay. If Abbott's not transacting  
10 business at the published WAC, does it still  
11 constitute a starting sales price?

12 MR. BERLIN: Objection. Form.

13 BY THE WITNESS:

14 A. Yes. It's the price that's  
15 available to anybody that we deal with for  
16 customers that want to come and buy a case of our  
17 product.

18 BY MR. ANDERSON:

19 Q. You say available, what do you mean  
20 by that?

21 A. If someone called up the Abbott  
22 customer service, that's the price they would be  
23 quoted for a case of the product.

24 Q. But were they actually charged it?

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1 A. If they didn't have a contract and  
2 they wanted to buy it, yes.

3 Q. Do you know if any wholesalers back  
4 in 2002 were buying any product, any Erythromycin  
5 product, from Abbott at WAC?

6 A. I don't know. I didn't really look  
7 at that type of analysis. I looked at the people  
8 we were contracting with and then, in general, I  
9 looked at -- I do remember looking at, you know,  
10 how much sales were at contract versus total  
11 sales. So there were some people that weren't  
12 under contract. So I'm assuming somebody must  
13 have been buying at the WAC price.

14 Q. You recall doing that type of  
15 analysis specifically for the Erythromycins?

16 A. I don't recall a specific instance,  
17 but I'm sure that was something when we were  
18 having contract discussions it would have been a  
19 question that probably came up just to say if, you  
20 know, you're contracting, how many people are you  
21 contracting with, what's the value of these  
22 contracts.

23 Q. Okay. I'm going to break this down.

24 A. Okay.

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1 Q. I'm going to limit my questions for  
2 the moment to wholesalers.

3 A. Okay.

4 Q. Do you recall doing an analysis on  
5 the Erythromycin products and determining that  
6 some wholesalers in 2002 or prior to 2002 were  
7 buying the Erythromycin drugs at WAC?

8 A. I don't remember doing an analysis  
9 like that.

10 Q. Okay. The analysis you just  
11 mentioned that you do recall doing was for all  
12 customers, is that right?

13 A. Right. For total Ery sales.

14 Q. Okay. And you're saying that you do  
15 recall determining that some Ery customers were  
16 not on contract, correct?

17 A. Yes.

18 Q. Okay. And what price do you believe  
19 those Ery customers who were not on contract and  
20 were not wholesalers were purchasing?

21 A. I assume they'd be paying WAC.

22 Q. Why?

23 A. Because if they didn't have a

24 contract and didn't meet the minimum requirements

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<p style="text-align: right;">Page 174</p> <p>1 of the base deal price, then I would assume they 2 would pay our WAC price. It's the publicly 3 available price. If you don't have a contract, 4 that's what you pay. 5 Q. To whom would the pharmacies pay 6 WAC? 7 A. If someone came to us directly and 8 wanted to buy a case, they would pay us WAC. 9 Q. And do you recall determining that 10 that had occurred for the Erythromycins? 11 A. I didn't look at the people that 12 weren't under contract, specifically. So I had 13 various specific data on customers that were under 14 contract and then I had our total Ery net sales, 15 but the people that weren't under contract, I 16 didn't have visibility to so I didn't look at who 17 those people were or what they were paying. 18 Q. Do you know what they were paying at 19 all? 20 A. No. 21 Q. Because you weren't actually even 22 able to see who they were? 23 A. No. 24 Q. How do you even know that that type</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. BERLIN: Objection. Form. 2 Mischaracterizes her testimony. 3 BY THE WITNESS: 4 A. The wholesalers were offered a base 5 deal price. If they bought a minimum quantity of 6 Ery, they could get a discounted price. 7 BY MR. ANDERSON: 8 Q. And that minimum quantity was so low 9 that the wholesalers always qualified for it? 10 MR. BERLIN: Objection. Form. 11 BY THE WITNESS: 12 A. That I don't know. Again, I was 13 focused on the contract sales. 14 BY MR. ANDERSON: 15 Q. We'll get to the minimum quantity in 16 just a second. 17 A. Okay. 18 Q. You'll agree that wholesalers were 19 buying Ery for base deal? 20 MR. BERLIN: I'm sorry. Are you 21 asking whether -- I'm just -- can I help you a 22 little bit here or do you want me just to say 23 objection? 24 MR. ANDERSON: I think let's just</p>
<p style="text-align: right;">Page 175</p> <p>1 of noncontract sale occurred? 2 A. Process of elimination, I guess. 3 Because I know the total sales and I know who was 4 under contract. 5 Q. Right. I'm following you there, but 6 it's the leap to the fact that they paid WAC or 7 the statement on -- and I'll -- what I'm trying to 8 get to is do you think it's possible, ma'am, that 9 to the extent there were any noncontract sales of 10 Erythromycin to pharmacies that those pharmacies 11 paid base deal price? 12 A. I don't know. 13 Q. You're not sure if it's possible or 14 not? 15 A. I'm not sure. Again, I didn't have 16 visibility to the people that we didn't have 17 contracts with. 18 Q. Okay. Let me -- I'm going to come 19 at it from a slightly different angle and I'll go 20 step by step. 21 A. Okay. 22 Q. You agreed that prior to July of 23 '03, wholesalers bought their Erythromycin from 24 Abbott at base deal?</p>	<p style="text-align: right;">Page 177</p> <p>1 stick with objection. 2 MR. BERLIN: I'm trying to help you, 3 but I don't want you to get upset that I'm getting 4 in the way because it's kind of painful to watch 5 this. 6 MR. ANDERSON: If you want to 7 object, that's fine, Eric. 8 MR. BERLIN: Okay. There's an 9 objection. 10 BY THE WITNESS: 11 A. I'm sorry. Can you repeat your 12 question? 13 BY MR. ANDERSON: 14 Q. Yeah. You'll agree that prior to 15 July of 2003, wholesalers were paying Abbott base 16 deal price for the Erythromycin products? 17 MR. BERLIN: Objection. Form. 18 BY THE WITNESS: 19 A. I didn't actually see what the 20 wholesalers were paying. I was really focusing 21 more on the contract price they -- we were 22 offering to the retail buying groups and the chain 23 pharmacies. I knew that the base deal price 24 existed, but I didn't have association with who</p>

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1 had -- I wasn't sure who had access to the base  
 2 deal price in specifics. I couldn't tell you the  
 3 list of customers that did or didn't buy or even  
 4 had access to that pricing.  
 5 BY MR. ANDERSON:  
 6 Q. You said you were focusing on the  
 7 retail buying group or chain prices, is that true?  
 8 A. Yes.  
 9 Q. Okay. And you knew since you were  
 10 focusing on those prices, that those prices were  
 11 lower than base deal price?  
 12 A. Yes.  
 13 Q. Okay. So to the extent a pharmacy  
 14 was not buying Ery on contract -- which did occur,  
 15 correct?  
 16 A. I believe so, but, again, I'm not  
 17 sure.  
 18 Q. And you don't remember the details.  
 19 You weren't even able to really access that, but  
 20 you saw that it did occur on a rare occasion,  
 21 correct?  
 22 A. There were customers that were  
 23 buying at a noncontract price, what I would  
 24 assumed to be WAC.

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1 Q. Is it -- right. Well, that's where  
 2 I'm going with these questions. I'm trying to get  
 3 to that assumption. Is it possible, ma'am, that  
 4 prior to July 2003 to the extent a noncontract  
 5 pharmacy customer was buying Ery from a  
 6 wholesaler, they were buying it from that  
 7 wholesaler at base deal price?  
 8 A. That I have no idea. I don't know  
 9 what the wholesalers charge their customers.  
 10 Q. Do you have any idea that the  
 11 wholesalers were charging the pharmacies WAC?  
 12 A. I have no idea what they were  
 13 charging their customers.  
 14 Q. Right. So you really don't have a  
 15 foundation for your assumption that some contract  
 16 pharmacies were paying WAC, do you?  
 17 MR. BERLIN: Objection. Form.  
 18 BY THE WITNESS:  
 19 A. If they were coming through Abbott,  
 20 I don't -- I probably shouldn't assume that  
 21 either, but between the wholesaler and their  
 22 customers, I have no idea between -- what happened  
 23 between Abbott and its direct customers which  
 24 could have included chain pharmacies coming to us.

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1 If someone came to us and they didn't have a  
 2 contract, my general pricing assumption is that  
 3 they would pay WAC.  
 4 BY MR. ANDERSON:  
 5 Q. Do you have any basis for that  
 6 assumption?  
 7 A. Just my general understanding of the  
 8 pricing department and why we contract and that  
 9 WAC is the starting price, but not any specific  
 10 example where I could point to a system.  
 11 Q. Do you have any reason to believe  
 12 that while WAC may be the starting price for many  
 13 PPD drugs, it was not the starting price for the  
 14 Erythromycins prior to July of 2003?  
 15 A. WAC is always where we start our  
 16 pricing analysis because it's the publicly  
 17 available price.  
 18 Q. Why did Abbott even go to the  
 19 trouble of having base deal?  
 20 MR. BERLIN: Objection. Form.  
 21 BY THE WITNESS:  
 22 A. That I don't know. It existed  
 23 before I was in my position.  
 24

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1 BY MR. ANDERSON:  
 2 Q. Are you aware of any efforts to  
 3 analyze WAC prices and prompt pay discounts on WAC  
 4 prices?  
 5 A. The prompt pay discounts are taken  
 6 out after the net sales line for the net sales we  
 7 calculate in the pricing department. So I didn't  
 8 have visibility to that part of the sales.  
 9 Q. I'll ask a broader question. Are  
 10 you aware of any efforts to analyze WAC prices and  
 11 determine the appropriate level in which to set  
 12 WAC prices?  
 13 A. Can you say that one more time?  
 14 Q. Are you aware of any efforts to  
 15 analyze WAC prices and determine the appropriate  
 16 levels at which to set WAC prices?  
 17 A. Yes.  
 18 Q. What were the criterias that were  
 19 used in making that determination?  
 20 A. For a new product coming onto the  
 21 market, there would be market research involved.  
 22 I haven't participated in any of those specific  
 23 research studies so I can't go into the details.  
 24 For prices that are -- for products that are

46 (Pages 178 to 181)

<p style="text-align: right;">Page 202</p> <p>1 charge backs," did I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. So you appreciated that the decision</p> <p>4 to continue the base deal prices was going to</p> <p>5 alter the invoice prices on the Erythromycins from</p> <p>6 Abbott to wholesalers?</p> <p>7 A. Yes.</p> <p>8 Q. Now, if we could quantify that</p> <p>9 because I know it's hard to recall specific</p> <p>10 numerical prices. Look at Exhibit 16 and compare</p> <p>11 that to Exhibit 17 and just to make it easy for a</p> <p>12 point of reference, I'm looking on Exhibit 16, the</p> <p>13 very last NDC number before you get to the Ross</p> <p>14 product section, which is 6301-53.</p> <p>15 A. Yes.</p> <p>16 Q. And you go across and there's a list</p> <p>17 price of \$105.25 and a WAC price of \$99.99,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then if you go back and you look</p> <p>21 at the price list that's marked as Exhibit 17,</p> <p>22 that exact same \$99.99 price is listed in the case</p> <p>23 price column for that product, correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 204</p> <p>1 that the wholesalers would pay the WAC price of</p> <p>2 \$99.99.</p> <p>3 BY MR. ANDERSON:</p> <p>4 Q. Did the wholesalers have any</p> <p>5 complaints about being billed higher prices on</p> <p>6 Erythromycin products as of July 1st, 2003?</p> <p>7 MR. BERLIN: Objection. Form.</p> <p>8 Foundation.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Not that I recall, but they probably</p> <p>11 would have talked to their national trade</p> <p>12 executive if they had issues like that.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. Did you ever hear about complaints</p> <p>15 from wholesalers concerning the discontinuation of</p> <p>16 base deal pricing?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Can you explain why wholesalers</p> <p>19 would be willing to be billed at higher prices on</p> <p>20 the Erythromycins after the discontinuation of</p> <p>21 base deal price?</p> <p>22 MR. BERLIN: Objection. Form.</p> <p>23 Foundation.</p> <p>24 BY THE WITNESS:</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. And so -- well, strike that. Let me</p> <p>2 ask you a couple more foundational questions.</p> <p>3 Before July 1st, 2003, if a wholesaler had</p> <p>4 qualified by purchasing \$500 or more, they would</p> <p>5 have been billed at base deal for that particular</p> <p>6 drug at \$58.65, correct?</p> <p>7 MR. BERLIN: Objection. Form.</p> <p>8 Foundation.</p> <p>9 BY THE WITNESS:</p> <p>10 A. That would be my assumption. Again,</p> <p>11 since I wasn't in that department, I can't verify</p> <p>12 for sure that's what they were billed.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q. And then the next day on July 1st,</p> <p>15 2003, when base deal was discontinued suddenly the</p> <p>16 wholesalers would be build at a \$99.99 price which</p> <p>17 was almost double what they had previously been</p> <p>18 billed --</p> <p>19 MR. BERLIN: Objection.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. -- correct?</p> <p>22 MR. BERLIN: I'm sorry. Form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. For July 1st, 2003, I would assume</p>	<p style="text-align: right;">Page 205</p> <p>1 A. That was the price we were offering.</p> <p>2 So we may have gotten objections, but the WAC</p> <p>3 price was the WAC price.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. Yeah. I mean I understand you're</p> <p>6 saying the WAC price is the WAC price, but doesn't</p> <p>7 it seem like if on June 30th, 2003, Cardinal,</p> <p>8 McKesson, AmerisourceBergen are being billed \$58</p> <p>9 and then the very next day now they're being</p> <p>10 billed \$99.99 they would have some questions or</p> <p>11 concerns about that?</p> <p>12 MR. BERLIN: Objection. Form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Any concerns or questions about</p> <p>15 pricing or things like that really would have gone</p> <p>16 through the national trade executives and I wasn't</p> <p>17 aware of anything. If there was anything, I would</p> <p>18 assume the national trade executives would follow</p> <p>19 up on it.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q. Did you have any understanding about</p> <p>22 why Abbott was choosing to discontinue base deal</p> <p>23 prices in July of 2003?</p> <p>24 A. I can't remember any specific</p>

52 (Pages 202 to 205)